

**IN THE COURT OF APPEALS**  
**FIRST APPELLATE DISTRICT OF OHIO**  
**HAMILTON COUNTY, OHIO**

MARCOS BODON, <sup>1</sup>	:	APPEAL NO. C-090266
	:	TRIAL NO. SP-0800612
Petitioner-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
STATE OF OHIO,	:	
	:	
Respondent-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>2</sup>

In Georgia in 2002, petitioner-appellant Marcos Bodon entered an *Alford*<sup>3</sup> plea to and was convicted of sexual assault and sexual battery. In 2004, Bodon was classified by the state of Georgia as a sexually-oriented offender. Bodon subsequently moved to Ohio.

Bodon received a notice from the Ohio Attorney General stating that he had been reclassified under Am.Sub.S.B. No. 10 (“Senate Bill 10”) as a Tier III sex offender and that he was required to register with the local sheriff every 90 days for life. Bodon filed an R.C. 2950.031(E) petition to contest his reclassification, challenging the constitutionality of Senate Bill 10. He also filed an R.C. 2950.11(F)(2) motion for relief from the community-notification provisions. After a hearing, the trial court overruled

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<sup>1</sup> Petitioner-appellant’s name appears on some documents as Marcus Bodon.

<sup>2</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

<sup>3</sup> *North Carolina v. Alford* (1970), 400 U.S. 25, 91 S.Ct. 160.

Bodon's constitutional challenges to Senate Bill 10. The parties agreed that Bodon had been incorrectly classified as a Tier III offender. The trial court found that Bodon's correct classification was a Tier I offender. As a Tier I offender, Bodon is required to register annually for 15 years, but he is not subject to community notification.

Bodon's first assignment of error, which alleges that the retroactive application of Senate Bill 10's tier-classification and registration requirements violates the constitutional ban on ex post facto laws, is overruled.

"The Ex Post Facto Clause applies only to criminal statutes."<sup>4</sup> We held in *Sewell v. State*<sup>5</sup> that the tier-classification and registration provisions of Senate Bill 10 are remedial and not punitive, and that they do not have the effect of converting a remedial statute into a punitive one. Because Senate Bill 10's classification and registration provisions are civil and remedial, not criminal, they do not violate the constitutional ban on ex post facto laws.

Bodon's second, third, and fourth assignments of error are overruled because the retroactive application of Senate Bill 10's tier-classification and registration requirements does not violate the prohibition on retroactive laws contained in Section 28, Article II of the Ohio Constitution, the Double Jeopardy Clause of the Ohio Constitution, or the separation-of-powers doctrine.<sup>6</sup> Bodon's arguments under the United States Constitution are also overruled on *Sewell's* reasoning.

Bodon's fifth assignment of error is overruled. Bodon has no standing to challenge Senate Bill 10's residency restriction because he has not shown that he lives in or owns property within the restricted area or that he has been forced to move outside

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<sup>4</sup> See *State v. Cook*, 83 Ohio St.3d 404, 1998-Ohio-291, 700 N.E.2d 570, citing *California Dept. of Corrections v. Morales* (1995), 514 U.S. 499, 504, 115 S.Ct. 1597, and *Collins v. Youngblood* (1990), 497 U.S. 37, 43, 110 S.Ct. 2715.

<sup>5</sup> 181 Ohio App.3d 280, 2009-Ohio-872, 908 N.E.2d 995.

<sup>6</sup> *Id.*

the restricted area.<sup>7</sup> We note that the Ohio Supreme Court held in *Hyle v. Porter*<sup>8</sup> that because the residency restriction in former R.C. 2950.031 was not expressly made retrospective, it could not be applied to an offender who had bought his home and committed his offense before the effective date of the statute.

The sixth assignment of error, alleging that the retroactive application of Senate Bill 10's registration requirements constitutes cruel and unusual punishment, is overruled because the statutes are civil and remedial, not punitive.<sup>9</sup> Therefore, the registration requirements cannot be viewed as punishment.<sup>10</sup>

Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HENDON, P.J., SUNDERMANN and MALLORY, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on January 27, 2010

per order of the Court \_\_\_\_\_.  
Presiding Judge

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<sup>7</sup> See *State v. Randlett*, 4th Dist. No. 08CA3046, 2009-Ohio-112; *State v. Swank*, 11th Dist. No. 2008-L-019, 2008-Ohio-6059; *State v. Duncan*, 3rd Dist. No. 7-08-03, 2008-Ohio-5830.

<sup>8</sup> 117 Ohio St.3d 165, 2008-Ohio-542, 882 N.E.2d 899.

<sup>9</sup> See *Sewell v. State*, supra, at fn. 3.

<sup>10</sup> See *id.*; *State v. Williams*, 12th Dist. No. CA2008-02-029, 2008-Ohio-6195; *State v. Byers*, 7th Dist. No. 07 CO 39, 2008-Ohio-5051.